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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY FALONEY
404 Boggs Avenue, Apt. 1
Pittsburgh, PA 15211

: CIVIL ACTION
:
: No.: 07 CV 1455 JP

and

JAMES M. AND ANITRA WHITT, H./W.
1322 Sagmore Court
Virginia Beach, VA 23464
on behalf of themselves and
all others similarly situated,

Plaintiffs

v.

WACHOVIA BANK, N.A.
1 Wachovia Center
Charlotte, NC 28288

: JURY TRIAL DEMANDED

Defendant

FILED
FDC
Clerk
U.S. District

SECOND AMENDED COMPLAINT/CLASS ACTION

Plaintiffs Mary Faloney, James M. and Anitra Whitt bring this action pursuant to 18 U.S.C. § 1964(c) on their own behalf and behalf of all others similarly situated against defendant Wachovia Bank, N.A. (“Wachovia”) to recover threefold the damages incurred by plaintiffs and the class as a consequence of defendant Wachovia’s violation of 18 U.S.C. § 1962(d), and in support hereof, aver as follows:

THE PARTIES

1. Plaintiff Mary Faloney is an individual residing at 404 Boggs Avenue, Apartment 1, Pittsburgh, Pennsylvania, 15211. Plaintiff brings this action on her own behalf and on behalf of all individuals similarly situated.

2. Plaintiffs James M. and Anitra Whitt are individuals residing at 1322 Sagamore Court, Virginia Beach, Virginia, 23464. They bring this action on their own behalf and on behalf of all individuals similarly situated.

3. Defendant Wachovia Bank, N.A. (hereinafter “Wachovia”) is a national bank with its principal place of business in Charlotte, North Carolina. Wachovia, aware that the payment processors described below were engaged in a telemarketing scheme to defraud primarily the elderly, conspired with the payment processors by opening accounts and clearing millions of dollars in remotely created drafts issued by the processors and made out to the fraudulent telemarketers. Wachovia knew, *inter alia*, that a significant number of these drafts were issued based upon banking information fraudulently procured by telemarketers; that payment processors and remotely created drafts were frequently used to advance fraudulent telemarketing schemes; that the accounts it opened involved entities run by a convicted perpetrator of consumer fraud, Donald Hellinger, who was repeatedly the subject of consumer fraud actions by the federal government; and that Donald Hellinger and the persons associated with the payment processor, Payment Processing Center, LLC, were the same persons who had been associated with Netchex, a payment processor serviced by Wachovia that had experienced an extraordinary return rate on the remotely created drafts that it had issued on behalf of telemarketers, many of which were the subject of successful government consumer fraud suits. Wachovia therefore obtained special agreements from its co-conspirators according it protections beyond those provided by the Uniform Commercial Code as a condition for continuing to maintain the accounts and participating in the scheme. Further, Wachovia continued to participate in the scheme after being told by

other banks of the fraud and after another of its payment processor clients that served telemarketers, Amerinet, agreed to cease issuing remotely created drafts after a consumer fraud action brought by the attorneys general of Ohio, Florida, Illinois, North Carolina, and Vermont.

OTHER PERSONS AND ENTITIES

4. Payment Processing Center, LLC (“PPC”) is a limited liability corporation established on December 8, 2004, under the laws of the Commonwealth of Pennsylvania. PPC was founded by Michael Weisberg and owned by Weisberg, Ronald and Donald M. Hellinger, Jami M. Pearlman and Mary O’Keefe Quigley. PPC is not named as a defendant herein. Under alternative allegations, PPC is a “person” as that term is used in 18 U.S.C. § 1961(3), an “enterprise” as that term is used in 18 U.S.C. § 1961(4), and/or part of an “enterprise-in-fact” as that term is used in 18 U.S.C. § 1961(4).

(a) As described below, PPC was a payment processor. Its primary activity was the issuance and depositing of remotely created demand drafts on behalf of fraudulent telemarketers;

(b) A large number of the companies that used PPC as a payment processor have been the subject of state and federal law enforcement involving consumer fraud;

(c) PPC itself and its officers and owners were the subject of the action, *United States v. Payment Processing Center, et al.*, No. 06-725, in which its continuing activities were enjoined and its assets seized.

5. Netchex (or Netchex Corporation or Net Holdings Corporation) was part of a group of entities including Universal Payment Solutions and Check Recovery Systems, which are collectively known by law enforcement authorities as the “Newtown Platform.” They operated out of a common address in Newtown, Pennsylvania. The exact structure of those entities is not known to plaintiffs, but on July 15, 2004, Check Recovery Systems announced in a press release that the three constituent companies identified above as part of the Newtown Platform had been merged into a single company. On December 23, 2005, the Pennsylvania Secretary of State shows Net Holdings Corporation (a successor corporation to Netchex Corporation) being merged into CRS Holdings, Inc., and identifying Jami Pearlman as President. Prior to that date, Netchex Corporation was registered as a corporation with the Pennsylvania Secretary of State and with the same address in Newtown, Pennsylvania as that of CRS Holdings Corporation. For the purpose of this complaint, the collective entity and its payment processing product are collectively referred to as “Netchex.” Netchex was founded on or about 2001 by Donald Hellinger. Netchex is not named as a defendant herein. Under alternative allegations, Netchex is a “person” as that term is used in 18 U.S.C. § 1961(3), an “enterprise” as that term is used in 18 U.S.C. § 1961(4), and/or part of an “enterprise-in-fact” as that term is used in 18 U.S.C. § 1961(4).

(a) As described below, Netchex was a payment processor. Its primary activity was the issuance and depositing of remotely created demand drafts on behalf of fraudulent telemarketers;

(b) A large number of the companies that utilized Netchex as a payment processor have been the subject of state and federal law enforcement involving consumer fraud.

6. Each of the telemarketers set forth below (a) was the subject of successful consumer fraud proceedings by the federal government or by the attorney general of one or more states; (b) was involved in a scheme to fraudulently obtain victims' bank account information; (c) used Netchex and/or PPC to process payments; and (d) cleared remotely created demand drafts through defendant Wachovia:

(a) Harijinder Sidhu, Joseph F. LaRosa, Jr., and Brian MacGregor are individuals who, through a group of related entities and use of fictitious names, have engaged in fraudulent telemarketing activities. The entities and names used by Sidhu, LaRosa, and MacGregor include the following: Universal Premium Services, Inc., also known as Premier Benefits, Inc., is a California corporation. It transacts business at various mail drop addresses in California under the names Premier Benefits, Buyer's Union, Premier Movie Pass, and Call-One Unlimited Communications. Consumer Reward Network, Inc. is a California corporation. It transacts business at various mail drop addresses in California under the names Star Communications, Consumer Health Reward Network, Health Network Unlimited, AutoGold, Net4Ever, Family Fun Pass, Mega Movie Pass, and Half Price TV. Star Communications LLC is a California limited liability company. It transacts business at various mail drop addresses in California under the names Star Communications, Family Fun Card, and Half Price TV. Membership Services Direct, Inc., also known as Continuity Partners, Inc., is a Nevada corporation. It has its principal place of business in Las Vegas, Nevada and maintains a place of

business in Malibu, California and does business under the names Continuity Partners, American Values, WellNet America, Washballs and Utalk Unlimited. Connect2USA, Inc. is a Nevada corporation. It has its principal place of business in Las Vegas, Nevada and maintains a place of business in Woodland Hills, California. Merchant Risk Management, Inc. is a Nevada corporation, with its principal place of business in Las Vegas, Nevada. Pantel One Corporation is a Nevada corporation, with its principal place of business in Las Vegas, Nevada. All Star Access, Inc. is a Colorado corporation and transacts business at various mail drops in Denver, Colorado and Las Vegas, Nevada under the names Movies Unlimited, Net Saver and Deluxe Holidays. Prime Time Ventures, Inc. is a Nevada Corporation and transacts business at various mail drops in Las Vegas, Nevada under the names That's Entertainment, VIP Holidays, Healthcare Plus and Protection Plus. These entities were the subject of *Federal Trade Commission v. Universal Premium Services, et al.*, CV06-0849 (C.D. Cal.). The FTC press release describing this action stated that “the defendants cold-called consumers falsely promising them valuable incentives ... in order to get the consumers to disclose their bank account information.”

(b) Byron W. Wolf, Roy A. Eliasson, Alfred H. Wolf, Donald L. Booth, Jeffrey P. Wolf, and John Louis Smith II are individuals who, through a group of related entities and use of fictitious names, have engaged in fraudulent telemarketing activities. The entities and names used by them include the following: FTN Promotions, Inc. does business under the names: Suntasia Inc., Suntasia Marketing, Inc., and Capital Vacations; Guardian Marketing Services Corp. does business under its own name and under the name Guardian Escrow Service; Strategia Marketing, LLC; Co-Compliance,

LLC; JPW Consultants, Inc. does business under the names Freedom Gold, Variety!, Credit Life, and Freedom Ring ULD; Travel Agents Direct, LLC does business under the names Travel Agents Go Direct, Floridaway, Travel Life Go Direct, Florida Direct and Lucid Long Distance; Agent's Travel Network Inc. does business under the name Florida Passport; Bay Pines Travel, Inc; Suntasia Properties, Inc. These entities are the subject of *Federal Trade Commission v. FTN Promotions, Inc et al.*, No. 8:07 CV 1279-T30TGW (M.D. Fla.). The FTC press release of July 25, 2007, stated: "The essence of this massive telemarketing scheme was simple: trick people into giving out their checking account numbers..."

(c) William H. Martell, Tracey A. Bascove, Mitchel Kastner, Ronald Corber, and Jason Castner are individuals who, through a group of related entities and use of fictitious names, have engaged in fraudulent telemarketing activities. The entities and names used by them include Sun Spectrum Communications Organizations Inc. d/b/a "Royal Credit Solutions," North American Communications Organization, Inc. d/b/a "Imperial Consumer Services," WWC12002, Inc. d/b/a "Beneficial Client Care," and 9106-7843 Quebec, Inc. d/b/a "Intelagent Media Inc." These entities were the subject of *FTC v. Sun Spectrum Communications Organization, Inc. et al*, 03-81105 Civ (S.D. Fla.). The FTC press release describing this action stated: "The FTC also alleges that the defendants violated the Gramm-Leach-Bliley Act by using false or fictitious statements to obtain consumers' bank account information."

(d) Navin Baboolal and Annilla Ramkissoon are individuals who, through related entities and use of fictitious names, have engaged in fraudulent telemarketing activities. The entities and names used by them include Millenium

Consulting and Med Supply Xtel Marketing, Inc. These entities were the subject of *FTC v. Xtel Marketing, Inc. et al.*, No. 04C 7238 (N.D. Ill.). The FTC press release describing this action stated: “A Canadian enterprise that targets elderly consumers, dupes them into revealing their bank account information, then debits hundreds of dollars from their accounts is facing Federal Trade Commission charges that its operation violated federal law.”

(e) Paul Price, Elissa R. Price a/k/a Lisa Price and Lisa Wells, and Mishele Wells are individuals who, through a group of related entities and use of fictitious names, have engaged in fraudulent telemarketing activities. The entities and names used by them include: 120194 Canada Ltd., which did business under the names Veritech Communications, Veritech Communication Services, Veritech, Prime One Benefits, Prime One Financial, Prime One, First National Credit Service, and U.S. National Credit; Prime One Financial Group, Inc., which did business under the names Prime One Benefits, Prime One Financial, Prime One, First National Credit Service, and U.S. National Credit; Marketing Directives, Inc., which did business under the names Ameriline and Ameriline Corp.; 1284383 Ontario Inc., which did business under the names, First National Credit Service and Direct Service Management; 1309529 Ontario Inc., which did business under the name U.S. National Credit; and Simax Corp., which did business under the names America’s Gift House, Gold Universal, Ameriline, and Ameriline Corp. These entities were the subject of *FTC v. 120194 Canada, Ltd. et al.* 1:04-cv-07204 (N.D. Ill.)

(f) Oleg Oks a/k/a Oleg A. Oks and Oleg Alex Oks, Aleksandr Oks, Philip Nemirovsky, and Boris Pekar are individuals who, through a group of related

entities and use of fictitious names, have engaged in fraudulent telemarketing activities. The entities and names used by them include: 1530605 Ontario, Inc. which did business under its own name and also under the name Pacific Liberty; 1559927 Ontario, Inc., which did business under its own name and also under the names Pacific Liberty Group and Pacific Liberty Liberty W Group; 1565205 Ontario Inc., which did business under its own name and also under the names: Pacific Liberty and Pacific Liberty W; 1585392 Ontario Inc., which did business under its own name and also under the names: Liberty Wide Info Services, Liberty Wide Info Services Group, Liberty Wide Services and Liberty Wide; 1620142 Ontario Inc., which did business under its own name and also under the names, Liberty Sun Info Services and Liberty Sun Info; 1619264 Ontario Inc., which did business under its own name and also under the name C&B Communications Group; 1629930 Ontario Inc. which did business under its own name and also under the names, Atlantic One Info Services Grp and Atlantic One Info Services Group; 1485635 Ontario Inc., which did business under its own name and also under the names Nationwide Credit Service Inc., Nation Wide Information Services Group Inc., and Nationwide Information Services. These entities were the subject of *FTC v. Oleg Oks, et al.*, No. 05C 5389 (N.D. Ill.).

(g) Donald J. Lasker, Bonnie Kriebel a/k/a Bonnie Lasker are individuals who, through related entities and use of fictitious names, have engaged in fraudulent telemarketing activities. The entities and names used by them include Frankly Speaking, Inc. and Plasticash. These entities were the subject of *FTC v. Frankly Speaking, Inc. et al.*, No. 1:05-cv-60 (M.D. Ga.).

(h) Advantage America, operates under the following names: First National Benefits, First Government Grants, First National Health Care, Titan Financial, First National Government Grants, AIG Limited, Premier Health Benefits, First National Health Care Limited, and First National Benefits. Advantage America was the subject of a cease and desist order obtained by the Attorney General of North Dakota.

(i) GSI Grant Services, a Barbados entity, is identified as a fraudulent telemarketer in *United States v. Payment Processing Center, et al*, Case No. 06-725.

(j) Your Choices, Inc. was the subject of proceedings brought by the attorneys general of Vermont, Florida, North Carolina, and Ohio resulting in the termination of remote demand draft processing by AmeriNet. It is identified as a fraudulent telemarketer in *United States v. Payment Processing Center, et al.*, No. 06-725. The press release issued by the North Carolina Attorney General issued November 3, 2005, described the Amerinet scheme, which used accounts at defendant Wachovia, as follows: “According to Cooper’s complaint against the company, AmeriNet debited consumers’ bank accounts on behalf of telemarketers pitching advance-fee loans and credit cards, credit repair, government grants and other bogus products. As many as 80 percent of people who had their accounts debited sought to have the money credited back to their bank accounts—a sign that many of these debits were not authorized by customers. Despite the high return rate, AmeriNet continued to provide services to the telemarketers. The complaint also alleges that AmeriNet processed unsigned checks without prior written authorization from consumers and processed electronic debits based on first-time cold telemarketing calls.”

(k) Consumer Grants USA was the subject of a consumer fraud action brought by the Attorney General of North Carolina. A default judgment was entered in that action on July 29, 2005. *State of North Carolina v. Consumer Grants USA, Inc. et al.*, No. 05 CVS 04732 (Wake County, NC). Consumer Grants USA was also the subject of a consumer fraud action by the Attorney General of Massachusetts in 2005 resulting in an injunction enjoining its continued operations in Massachusetts and imposing fines. The Massachusetts Attorney General's press release described the fraud: "The telemarketers told consumers that they had been 'chosen' or 'approved' for a government grant, typically for as much as \$8,000. They then convinced the consumers to authorize withdrawals from their bank accounts to cover 'processing fees' of typically, \$249 to \$259. After the fees were withdrawn, the only thing the consumers received in return was a booklet with listings of available government grant programs."

(m) Continuity Partners was the subject of separate consumer fraud actions by the Attorneys General of Ohio, Iowa, Oregon, and Wisconsin over a two-year period beginning in 2004. In the Ohio action, it agreed to entry of a consent judgment on or about January 18, 2006, acknowledging its consumer fraud including fraudulent use of demand drafts. The Iowa Attorney General's press release described the fraud: "They agreed to give their bank account number for the \$1.95 payment to receive \$200 in so-called gas coupons, but they rejected other offers. Nevertheless, unauthorized charges showed up on their bank or debit accounts.... Miller's office said the so-called \$200 of 'gas coupons' appear to be of little or no practical value."

The individuals and entities referred to in this paragraph are collectively referred to as "the Telemarketers." The Telemarketers are not named as defendants herein, but

each entity is an “enterprise” as that term is used in 18 U.S.C. § 1961(4), and collectively were part of an “enterprise-in-fact” as that term is used in 18 U.S.C. § 1961(4).

7. Donald M. Hellinger (“D. Hellinger”) is an individual residing at 1748 Quarry Road, Yardley, Pennsylvania. He was the founder of Netchex and the Newtown Platform and formulated, directed, controlled, or participated in the acts and practices of both Netchex and PPC of which he was also an owner. D. Hellinger is not named as a defendant but is, under alternative allegations, a “person” as that term is used in 18 U.S.C. § 1961(3) and part of an enterprise-in-fact under 18 U.S.C. § 1961(4).

(a) D. Hellinger had a long history of association in fraudulent marketing schemes and other aspects of fraudulent direct marketing.

(i) In 1989, he was convicted of tax evasion and mail fraud in connection with a “cents off coupon” consumer fraud scheme.

(ii) In 1995, he settled Federal Trade Commission allegations that he had engaged in the deceptive promotion of credit cards and other products via “900 numbers.” His settlement with the FTC enjoined him from engaging in consumer fraud, and in assisting others that he knows, or should know, are engaged in consumer fraud.

(iii) Notwithstanding his agreement with the FTC, he is the owner of Choices Unlimited, LLC, a company that from 1998 until 2004 operated out of the same location as Netchex, and thereafter, operated out of the same location as PPC. Choices Unlimited, LLC, provides fraudulent telemarketers with the names and telephone numbers of individuals who have been victimized by fraudulent telemarketers, and/or

whom it has determined are particularly susceptible to fraudulent telemarketing schemes. It sells such lists, among other places, through Walter Karl, a subsidiary of InfoUSA, Inc.

(iv) The United States Attorney for the Eastern District of Pennsylvania alleges in its Amended Verified Complaint for Injunctive Relief in *United States v. Payment Processing Center*, No. 06-725, that D. Hellinger frequently travels to Montreal, Quebec, where, the Government believes, he continues to be involved in fraudulent telemarketing schemes.

8. Michelle O’Keefe Quigley (“Quigley”) is an individual residing at 12097 Legion Street, Philadelphia, Pennsylvania. Quigley was the Chief Financial Officer of both Netchex and PPC, as well as an owner of both PPC and Netchex. She formulated, directed, controlled, or participated in the acts and practices of both Netchex and PPC. Quigley is not named as a defendant, but is under alternative allegations a “person” as that term is used in 18 U.S.C. § 1961(3) and part of an enterprise-in-fact under 18 U.S.C. § 1961(4).

(a) Like D. Hellinger, Quigley had a history of fraudulent marketing schemes.

(i) Doing business as Prophets, Inc., Quigley conducted a fraudulent direct mail marketing scheme under the names “Madame Arielle Dupont,” Institute of Astrological Research,” and “Sweepstakes Claim Center” from the common address of 301 Oxford Valley Road, Yardley, Pennsylvania.

(ii) After investigation by the United States Postal Service Inspection Service, and pursuant to a civil seizure warrant, Quigley relinquished \$92,527 of proceeds from her fraudulent schemes.

